

Embroidery Central Response to Order of 4/12/22

Darin Andersen <darin@embroidery.com>
To: Henry_Chambers@nyed.uscourts.gov



Fri, Apr 29, 2022 at 8:58 AM

Dear Judge Henry:

This email is in response to your order of 4/12/2022 which seeks our intentions regarding the complaint filed by Bradley Marks; *Luc Burbon vs Embroidery Central, Inc.* (1:21-cv-01677-NGG-MMH)

Embroidery Central became aware of this Order through an email sent by Mr. Marks on April 26th, one day after our deadline to respond.

We have not retained a New York attorney and, being a corporation, cannot file Pro se. Therefore, I hope this email will suffice in providing the information you requested.

We do not intend to answer this complaint in court and consequently, expect a default to be entered. Although we are waiving our right to respond to the factual allegations by not answering the complaint, we are confident that the court will deny default judgment based on the plaintiff's failure to Adequately Allege an ADA Violation; *Luc Burbon vs Needlepaint, LLC* 1:21-CV-1678 (EK) (RER).

Identical complaints by Luc Burbon were filed against NeedlePaint, LLC, Embroidery Central Inc., and several other crafting businesses on March 29, 2021. When Needlepaints failed to appear and the Marks firm moved for default, the Honorable Eric R. Komitee requested a Report & Recommendation regarding the motion. The report was prepared by Ramon E. Reyes, JR., U.S.M.J. The recommendation was followed, the motion for default judgment denied, and the complaint was dismissed. I have attached a copy of this report.

Using several different visually-impaired plaintiffs, the Marks Law firm has filed hundreds of these nearly identical complaints against out-of-state businesses in the Southern and Eastern New York District Courts between 2019 and the present. From Embroidery Central's experience and those whom we have contacted, no prior notice of grievance or opportunity to amend the grievance was given to defendants before the complaint was served. The complaints offer no specific facts of injury. Instead they cite a laundry list of common website accessibility issues and infer that the defendant's website is deficient. We requested specifics of our "non-compliance" from Mr. Marks but he has refused to provide this information prior to discovery. He also disregarded our efforts to address and correct the list of website accessibility issues cited in the complaint.

We fully support making websites better accessible to the visually impaired. However, it's evident that this lawsuit is not about accessibility, but rather, designed to garner cash settlements from small businesses. The weak factual and legal assertions made in these complaints, lead defendants to believe the lawsuit will be summarily dismissed. Instead, they find themselves in a costly, lengthy discovery process and eventually buckle to a non-disclosed cash settlement to avoid the high cost of pre-trial litigation.

These lawsuits are harmful to society. They exploit the judicial system and persons with disabilities to prey upon small businesses.

Embroidery Central is a small business with fewer than 15 employees. We do not have the financial means to take this to trial. It's a foregone conclusion that if we answer this complaint then we will be constrained to settle in a way that rewards the Mark's firm for their abuse.

For these financial and ethical reasons we have chosen not to answer this complaint in court. Embroidery Central chooses to be in default rather than reward the plaintiff and the law firm for using the court as a means to persecute and extort. However, we do believe that justice can be served in our absence as it was with Needlepaints.

Respectfully,
Darin Andersen, President
Embroidery Central, Inc.

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